Volume 27 | Number 3 Article 2

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Cases, Regulations and Statutes

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noted above. That was viewed as allowing expenditures of $500 or less of expenditures per invoice, or per item substantiated by an invoice, to be deducted annually for costs incurred on or after January 1, 2016.[12] However, *Revenue Procedure 2015-20*[13] requested comments by April 21, 2015, on whether the $500 "safe-harbor" threshold for items written off as an ordinary and necessary business expense was appropriate.[14] As explained in *Revenue Procedure 2015-20,* the "safe harbor" "merely establishes a minimum threshold below which qualified amounts are considered deductible."

In Notice 2015-82,[15] the Internal Revenue Service announced the increase in the "safe-harbor" expensing limit under the general rule from $500 to $2,500. The rules also permit taxpayers with an Applicable Financial Statement in place (few farmers and ranchers have such statements) to deduct up to $5,000.

Requirements

The "safe harbor" is elected by including a statement within each year's federal income tax return, indicating that the taxpayer is adopting the "safe harbor" for the year for a business. The deduction applies to small repair expenditures as well as purchases such as tools.

Possible collision of authorities

As indicated above, the Internal Revenue Service acknowledged in *Revenue Procedure 2015-33*[16] that the Internal Revenue Code (which is enacted by Congress and signed into law by the President, not by the Internal Revenue Service or the Department of the Treasury) points out that a taxpayer who changes the method of accounting on the basis of which he regularly computes his income in keeping his books shall, before computing his taxable income under the new method, secure the consent of the Secretary.[17] Only start-up firms filing their first returns, can adopt any permissible method of accounting and otherwise ". . . consent must be secured from the Commissioner whether or not such method is proper or is permitted by the Internal Revenue Code *or the regulations thereunder*."[18]

That means taxpayers should be aware that a question could be raised where a "safe harbor" allowance collides with the statute.

ENDNOTES

1 Prop. Treas. Reg. § 1.263-0, -1, -2, -3, Aug. 21, 2006.

2 T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331, *corrected* July 18, 2014.

3 Preamble to T.D. 9636, Sept. 13, 2013, 2013-2 C.B. 331. It is noted that Preambles merely provide an explanation of what is in the regulations and have little or no legal status.

4 2014-1 C.B. 607.

5 Rev. Proc. 2014-16, § 3.01(4)(1)(c)(ii), 2014-1 C.B. 607.

6 2014-2 C.B. 675

7 IR 2015-29, Feb. 13, 2015.

8 2015-1 C.B. 1067.

9 *Id.*

10 2015-1 C.B. 694.

11 Rev. Proc. 2015-33, 2015-1 C.B. 1067.

12 Notice 2015-82, 2015-2 C.B. 659.

13 2015-1 C.B. 694.

14 See Treas. Reg. § 1.263(a)-1(f)(3)(iv). The address for comments was the Internal Revenue Service, ATTN: CC:PA:LPD:PR (Rev. Proc. 2015-20), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 29944.

15 2015-2 C.B. 859.

16 2015-1 C.B. 1067.

17 I.R.C. § 446(e).

18 Treas. Reg. § 1.446-1(e). Emphasis added.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiffs were riding a horse on a highway in the early evening when they were struck by a vehicle owned and driven by the defendant. The defendant argued at trial that the plaintiffs were 100 percent negligent in failing to have lights on the horse while riding the horse on a highway after dark. La. Rev. Stat. §§ 32:53, 32:301 and 32:124 require vehicles to be registered, licensed and display lighted lamps when operated between sunset and sunrise. The statutes also applied to vehicles drawn by animals. The trial court granted summary judgment to the plaintiffs on the issue of negligence in that none of the statutes applied to horses unless they were drawing a vehicle. The appellate court affirmed on the issue and held that, although unwise, the riding of the horse without lights was not negligence for violation of the statutes. However, the appellate court reversed the summary judgment, holding that the failure of the plaintiff's to provide some illumination while riding a dark horse and wearing dark clothing after dark on a highway created an issue of fact as to the amount of negligence attributable to the plaintiffs for the accident. **Prejean v. State Farm Mut. Auto. Ins. Co., 2016 La. App. LEXIS (La. Ct. App. 2016)**.

BANKRUPTCY

FEDERAL TAX

AUTOMATIC STAY. The debtor filed for Chapter 7 on September 23, 2014 and listed expected income tax refunds from 2011 and 2012 as assets of the estate, with a portion claimed as exempt property. The 2011 and 2012 income tax returns were filed post-petition, claiming the refunds listed as estate property. The bankruptcy estate claims included loans owed to the USDA. The IRS retained the 2011 and 2012 refunds and applied them to the USDA loan. The trustee sought recovery of the refunds as retained in violation of the automatic stay. The IRS cited I.R.C. § 6402 as non-bankrupcy authority for allowing the IRS to offset a refund against the USDA loan because Section 6402 allows retention of overpaid taxes until the IRS determines that no offset is required; therefore, the debtor had no property interest in the refund at the time the petition was filed. Although the court acknowledged a split in authority on the issue, the court held that, in this case, Section 6402 does not apply because the IRS did not provide notice of the setoff until after the petition was filed and the automatic stay was created. Because the debtor did not receive any notice of the IRS offset until after the petition was filed, the offset violated the automatic stay and the IRS was required to issue the refund. ***In re* Addison, 2016 U.S. Dist. LEXIS 5739 (W.D. Va. 2016), *aff'g*, 533 B.R. 520 (Bankr. W.D. Va. 2015)**.

DISCHARGE. The debtor filed for Chapter 7 in July 2012. One of the claims against the debtor was a penalty for failure to file the 2008 tax return until almost two years after the income tax return due date, including the automatic extension to October 15, 2009. The Chapter 7 trustee paid the underlying taxes but did not pay the failure-to-file penalty. After the IRS intercepted state tax refunds and social security benefits in an attempt to collect the penalty, the Chapter 7 trustee sought to have the failure-to-file penalty declared discharged under Section 523(a)(7)(B) because the penalty accrued on the April 15, 2009 due date of the 2008 return, a date more than three years before the filing of the Chapter 7 petition. Section 523(a)(7)(B) allows the discharge of a governmental penalty that is "imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition." The issue in this case was the determination of when the "transaction or event" occurred. The Bankruptcy Court agreed with the trustee that the "transaction or event" was the date the 2008 income taxes were due, April 15, 2009. On appeal, the appellate court reversed, holding that Section 523(a)(7)(B) refers to the date the penalty accrued and not just when the underlying taxes were due. Because the failure-to-file penalty began to accrue on October 16, 2009, the day after the expiration of the automatic extension granted to the debtor, the penalty was nondischargeable because the "transaction or event" of the penalty occurred less than three years before the filing of the Cahpter 7 petition. **United States v. Wilson, 2016 U.S. Dist. LEXIS 7285 (N.D. Calif. 2016)**.

FEDERAL FARM PROGRAMS

FARM LOANS. The FSA has adopted final regulations adding Direct Farm Ownership Microloan (DFOML) to the existing Direct Loan Program. The revisions to the Direct Loan Program regulations consist of application, eligibility, repayment terms, and security requirements to better serve the unique operating needs of small family farm operations. The existing Microloans (ML) in the Direct Loan Program already include MLs for operating loans (OL). DFOML is expected to make farm ownership loans available and more attractive to small operators through reduced application requirements, more timely application processing, and added flexibility for Youth Loan borrowers in meeting the farm experience eligibility requirement. **81 Fed. Reg. 3289 (Jan. 21, 2016)**.

ORGANIC FOOD. The National Organic Program has announced the publication of *Substances Used in Post-Harvest Handling of Organic Products* (NOP 5023) and *Natural Resources and Biodiversity Conservation* (NOP 5020), final guidance documents intended for use by accredited certifying agents, and certified and exempt organic operations. The documents are available at http://www.ams.usda.gov/rules-regulations/organic. **81 Fed. Reg. 2067 (Jan. 15, 2016); 81 Fed. Reg. 2837 (Jan. 19, 2016)**.

FEDERAL ESTATE AND GIFT TAXATION

MARITAL DEDUCTION. Under the terms of the decedent's will, a trust was established and was to be funded by an amount that fully utilized the federal applicable credit amount, but no greater amount than is necessary to reduce to zero the smallest sum possible of the federal estate tax or state estate tax, payable as a result of the decedent's death. Under the trust agreement, the trustee was to pay all the net income from the trust to the surviving spouse until her death and the trustee was to pay or apply to the spouse as much of the trust principal as is necessary for her proper care and support, maintenance, health, and education during her lifetime. The trust also provided that the trustee has the power to appoint to the spouse, during any calendar year property in the value of the greater of $5,000 or 5 percent of the aggregate value of the trust. The trust provided that the spouse had a special power to appoint the remainder interest of the trust to the decedent's children then living in equal or unequal shares, exercisable in an instrument referencing the decedent's will or in the spouse's own will. If the spouse failed to exercise the special power of appointment, the remainder interest of the trust was to be divided among the spouse's living children at the time of the spouse's death, in equal shares. The decedent's will provided for all other estate property to pass to the spouse in fee simple. The spouse, as the executor of the decedent's estate, timely filed a Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*. All of the assets of the trust were included on Schedule M, *Bequests to Surviving Spouse*. All of the assets, other than the assets that funded the trust, passed to the spouse outright. By listing the assets of the trust on Schedule M, the executor made a QTIP election with respect to those assets. The decedent's estate received an estate tax closing letter indicating that no tax was due. The IRS ruled that the estate would be allowed to disregard the QTIP election, under *Rev. Proc. 2001-38, 2001-2 C.B. 124*, because the election was not needed to reduce the estate tax liability to zero. Therefore, the trust property would not be included in the surviving spouse's estate nor would the property be a gift if the surviving spouse disposed of the spouse's interest in the trust. In addition, the spouse would not be considered the transferor of the trust property for purposes of generation-skipping transfer tax. **Ltr. Rul. 201603004, Aug. 11, 2015**.

PORTABILITY. The decedent died, survived by a spouse, on a date after the effective date of the amendment of I.R.C. § 2010(c), which provides for portability of a "deceased spousal unused exclusion" (DSUE) amount to a surviving spouse. To obtain the benefit of portability of the decedent's DSUE amount to the spouse, the decedent's estate was required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, on or before the date that is 9 months after the decedent's date of death or the last day of the period covered by an extension. The decedent's estate did not file a timely Form 706 to make the portability election. The estate discovered its failure to elect portability after the due date for making the election. The spouse, as executrix of the decedent's estate, represented that the value of the decedent's gross estate is less than the basic exclusion amount in the year of the decedent's death and that during the decedent's lifetime, the decedent made no taxable gifts. The spouse requested an extension of time pursuant to Treas. Reg. § 301.9100-3 to elect portability of the decedent's DSUE amount pursuant to I.R.C. § 2010(c)(5)(A). The IRS granted the estate an extension of time to file Form 706 with the election. **Ltr. Rul. 201603003, Sept. 9, 2015; Ltr. Rul. 201603007, Aug. 17, 2015; Ltr. Rul. 201603021, Sept. 2, 2015**.

FEDERAL INCOME TAXATION

BIOFUELS CREDIT. The IRS has issued a notice which provides rules claimants must follow to make a one-time claim for payment of the credits and payments allowable under I.R.C. §§ 6426(c), 6426(d), and 6427(e) for biodiesel (including renewable diesel) mixtures and alternative fuels sold or used during calendar year 2015. These rules are prescribed under Sections 185(b)(4) and 192(c) of the *Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113*. The notice also provides instructions for how a claimant may offset its I.R.C. § 4081 liability with the I.R.C. § 6426(e) alternative fuel mixture credit for 2015, and provides instructions for how a claimant may make certain income tax claims for biodiesel, second generation biofuel, and alternative fuel. **Notice 2016-5, I.R.B. 2016-6**.

BUSINESS EXPENSES. The taxpayer was a professional corporation which operated a dental office. The dentist and spouse were the sole shareholders. On the advice of a tax professional, the dentist formed a second corporation to manage the taxpayer's operations and to provide the basis of an employee stock ownership plan (ESOP). The new corporation entered into a management contract to provide management services in exchange for a percentage fee. However, the management services before and after the contract were performed by the spouse. The taxpayer claimed a deduction for the management fees paid to the new corporation but the deductions were disallowed by the IRS. The court held that the deductions were properly disallowed because the taxpayer failed to show that the new corporation actually performed any services. The appellate court affirmed in a decision designated as not for publication. **Wiley M. Elick DDS, Inc. v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,147 (9th Cir. 2016), *aff'g*, T.C. Memo. 2013-139**.

COURT AWARDS AND SETTLEMENTS. The taxpayer had filed an employment discrimination lawsuit after termination of employment by an employer. The case was settled and the taxpayer received money and payment of attorneys fees and the taxpayer argued that, because the taxpayer suffered physical injury and sickness as a result of the actions of the employer, the proceeds of the settlement were not included in taxable income. The court held that the proceeds were taxable income because no part of the settlement agreement mentions that the proceeds were compensation for any injury or sickness but were only paid to avoid the expense of litigation. The appellate court affirmed in a decision designated as not for publication. **Duffy v. United Sates, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,138 (Fed. Cir. 2016), *aff'g*, 2015-1 U.S. Tax Cas. (CCH) ¶ 50,205 (Fed. Cls. 2015)**.

EMPLOYEE EXPENSES. the taxpayers, husband and wife, claimed deductions for unreimbursed employee expenses incurred by the wife in her job as a hospital consultant. The taxpayers claimed deductions for computers, statistical programs, printers, paper, and reference books (1) expenses incurred with regard to the wife's taking an online course in statistics, (2) travel expenses incurred by the taxpayers in connection with their respective employments, and (3) gifts. However, the only written records presented to support the expenses were credit card statements. The taxpayer made the novel argument that any additional recordkeeping requirements were unreasonable because the couple had a young child in their apartment during the IRS audit. Although the court sympathized with the difficulties of child-rearing, the court held that the deductions for the expenses were properly disallowed for lack of substantiation of the business or personal nature of the expenses. **Bernstein v. Comm'r, T.C. Summary Op. 2016-3**.

HEALTH INSURANCE. The IRS has published information about exemptions from the health care law's coverage requirement and the individual shared responsibility payment that will help taxpayers get ready to file your tax return. Taxpayers may be eligible to claim an exemption from the requirement to have coverage and thus not be required to make a payment with the tax return. If a taxpayer qualifies for an exemption, the taxpayer will need to file Form 8965, *Health Coverage Exemptions*, with the tax return. Taxpayers can claim most exemptions with tax return; however, taxpayers must apply for certain exemptions in advance through the Health Care Insurance Marketplace. If a taxpayer receives an exemption through the Marketplace, the taxpayer will receive an Exemption Certificate Number (ECN) to include when the taxpayer files. If a taxpayer has applied for an exemption through the Marketplace and is still waiting for a response, the taxpayer can put "pending" on the tax return where the taxpayer would normally put your ECN. Taxpayers do not need to file a return solely to report insurance coverage or to claim a coverage exemption. If a taxpayer is not required to file a federal income tax return for a year because the taxpayer's gross income is below the return filing threshold, the taxpayer is automatically exempt from the shared responsibility provision for that year and does not need to take any further action to secure an exemption. If a taxpayer files a tax return and the income is below the filing threshold for the taxpayer's filing status, the taxpayer should use Part II of Form 8965, *Coverage Exemptions for Your Household Claimed on Your Return*, to claim a coverage exemption. Taxpayers should not make a shared responsibility payment if they are exempt from the coverage requirement because they have income below the filing threshold. If a taxpayer does not have qualifying coverage or an exemption for the year, the taxpayer will need to make an individual shared responsibility payment for each month without coverage or an exemption when filing the return. Examples and information about figuring the payment are available on the IRS *Calculating the Payment* web page. https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/ACA-Individual-Shared-Responsibility-Provision-Calculating-the-Payment. **Heath Care Tax Tip 2016-08**.

HOME OFFICE. The taxpayer formed a limited liability company which engaged in a real estate activity in which the taxpayer purchased distress housing which was "flipped" for a profit. The taxpayer reported short term capital gains from the sales. The gain was calculated by increasing the taxpayer's basis in each property by the taxpayer's home office expenses incurred during the purchase and sale of the properties. The court held that the home office expenses could not be added to the taxpayer's basis in the properties because the home office expense was a cost of doing business and not a cost directly related to the expenses of purchasing and selling the properties. **Niemann v. Comm'r, T.C. Memo. 2016-11**.

INNOCENT SPOUSE RELIEF. The taxpayer and spouse filed a joint return for 2011, although they had separated and the spouse had filed for divorce. In 2011 the spouse received a substantial social security benefit payment which was deposited in the spouse's separate account. The 2011 joint return declared the benefit payment in income but the only payment of taxes came from the withheld amounts from the taxpayer's wages. No taxes were withheld from the benefits payment and no additional payment was made with the return. The spouse failed to sign the original return but signed the return during the divorce proceedings. There was no mention of whether the spouse would agree to pay the taxes owed above the withheld amount. The IRS assessed the unpaid amount of tax plus interest and penalties. The divorce decree provided that the taxpayer had to sell a vehicle and any profit from the sale was to be paid toward the taxes. The taxpayer filed for innocent spouse relief and the IRS granted the request for the portion of the taxes attributable to the social security benefits received by the spouse. The spouse appealed the ruling and the IRS Appeals Office reversed the ruling. On appeal to the court, the court held that the taxpayer was not entitled to equitable innocent spouse relief because the taxpayer had no reasonable belief that the spouse would pay even a portion of the taxes unpaid with the return and the taxpayer would not suffer any hardship from payment of the taxes, interest and penalties owed. The court also noted that the taxpayer voluntarily chose to file a joint return during the separation and after the filing for divorce; therefore, the taxpayer received a tax benefit from the filing status. **Elbe v. Comm'r, T.C. Summary Op. 2016-2**.

LEGAL FEES.The taxpayer was offered an investment opportunity to purchase a package of distressed student loans. The taxpayer hired an attorney to evaluate the loans and eventually decided against making the investment. The taxpayer claimed a Schedule C deduction for the costs of the attorney. The IRS disallowed the deductions because the taxpayer was not involved in a trade or business of making or purchasing loans. The court agreed with the IRS that the taxpayer's occasional making of a few loans did not amount to a trade or business of making loans' therefore, the taxpayer could not claim a business deduction for the attorney costs. **Niemann v. Comm'r, T.C. Memo. 2016-11.**

PARTNERSHIPS

ELECTION TO ADJUST BASIS. The taxpayer was a limited liability company which elected to be taxed as a partnership. During the tax year, several interests in the taxpayer were transferred. The taxpayer hired a tax advisor to file the taxpayer's return and the return preparer failed to make the I.R.C. § 754 election to adjust the taxpayer's basis in partnership property. The IRS granted the taxpayer an extension of time to file an amended return with the election. **Ltr. Rul. 201603018, Oct. 5, 2015**.

ENTITY CLASSIFICATION. The taxpayer was a limited liability company formed and owned by a foreign corporation. The taxpayer intended to be classified as an association for federal tax purposes but failed to file a timely Form 8832, *Entity Classification Election*, to be classified as an association for federal tax purposes. The taxpayer stated that it had filed all tax and information returns as if it was an association. The IRS granted an extension of time to file the election. **Ltr. Rul. 201603022, Sept. 29, 2015**.

TRANSACTIONS WITH PARTNERS. The taxpayer was a limited liability company formed by two persons for the purpose of buying and managing real property. The taxpayer planned to grant conservation easements to the property in exchange for state tax credits. The taxpayer offered another company an interest in the taxpayer in exchange for a substantial contribution of money to the taxpayer which would transfer a portion of the state tax credits to the new member. On the taxpayer's tax return, the taxpayer treated the contribution of funds as a contribution to the taxpayer but the IRS disallowed the allocation, recharacterizing the transaction as a sale of an interest in the taxpayer. The Tax Court held that the transaction was actually a sale of the interest in the taxpayer because the new member would not have made the contribution without the reasonable certainty of the transfer of the state income tax credits after the grant of the conservation easement. **Route 231, LLC v. Comm'r, 2016-1 U.S. Tax Cas. (CCH) ¶ 50,143 (4th Cir. 2016),** ***aff'g*****, T.C. Memo. 2014-30**.

PENALTIES. The IRS has issued a revenue procedure which updates *Rev. Proc. 2015-16, 2015-1 C.B. 596*, and identifies circumstances under which the disclosure on a taxpayer's income tax return with respect to an item or position is adequate for the purpose of reducing the understatement of income tax under I.R.C. § 6662(d) (relating to the substantial understatement aspect of the accuracy-related penalty), and for the purpose of avoiding the tax return preparer penalty under I.R.C. § 6694(a) (relating to understatements due to unreasonable positions) with respect to income tax returns. For tax items not included in this revenue procedure, disclosure is adequate with respect to that item only if made on a properly completed Form 8275, *Disclosure Statement*, or 8275-R, *Regulation Disclosure Statement*, as appropriate, attached to the return for the year or to a qualified amended return. **Rev. Proc. 2016-13, 2016-1 C.B. 290**.

PENSION PLANS. For plans beginning in January 2016 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities annual interest rate for this period is 3.03 percent. The 30-year Treasury weighted average is 3.12 percent, and the 90 percent to 105 percent permissible range is 2.81 percent to 3.28 percent. The 24-month average corporate bond segment rates for January 2016, without adjustment by the 25-year average segment rates are: 1.41 percent for the first segment; 3.96 percent for the second segment; and 4.97 percent for the third segment. The 24-month average corporate bond segment rates for January 2016, taking into account the 25-year average segment rates, are: 4.43 percent for the first segment; 5.91 percent for the second segment; and 6.65 percent for the third segment. **Notice 2016-7, I.R.B. 2016-5**.

PRACTICE BEFORE IRS. The IRS has published information on the use of a tax professional to represent taxpayers before the IRS. Representation rights, also known as practice rights, fall into two categories: unlimited representation and limited representation. Unlimited representation rights allow a credentialed tax practitioner to represent taxpayers before the IRS on any tax matter. This is true no matter who prepared the taxpayer's return. Credentialed tax professionals who have unlimited representation rights include enrolled agents, certified public accountants, and attorneys. Limited representation rights authorize the tax professional to represent a taxpayer if, and only if, they prepared and signed the taxpayer's return. They can do this only before IRS revenue agents, customer service representatives and similar IRS employees. They cannot represent clients regarding appeals or collection issues even if they did prepare the return in question. For returns filed after Dec. 31, 2015, the only tax return preparers with limited representation rights are Annual Filing Season Program participants. The Annual Filing Season Program is a voluntary program. Non-credentialed tax return preparers who aim for a higher level of professionalism are encouraged to participate. Other tax return preparers have limited representation rights, but only for returns filed before Jan. 1, 2016. **IRS Special Edition Tax Tip 2016-2**.

RETURNS. The IRS has published information for taxpayers who may not be required to file a tax return but should in certain circumstances. *Premium Tax Credit*. If a taxpayer enrolled in health insurance through the Health Insurance Marketplace in 2015, the taxpayer may be eligible for the premium tax credit. Taxpayers will need to file a return to claim the credit. If a taxpayer chose to have advance payments of the premium tax credit sent directly to the health insurer during 2015, the taxpayer must file a federal tax return. Taxpayers should reconcile any advance payments with the allowable premium tax credit. Taxpayers should receive a Form 1095-A, *Health Insurance Marketplace Statement*, by early February which will have information that will help in filing a tax return. *Tax Withheld or Paid*. Taxpayers may be due a refund if their employer withheld federal income tax from wages, if the taxpayer made estimated tax payments, or if the taxpayer overpaid taxes last year and will have it applied to this year's tax. Taxpayer have to file a tax return to get any refunds or to apply refunds to future taxes. *Earned Income Tax Credit*. Taxpayers who worked and earned less than $53,267 in 2015 could receive an EITC as a tax refund, if they qualify, with or without a qualifying child. Taxpayers may use the 2015 EITC Assistant tool on www.IRS.gov to find out if they qualify. Taxpayers must file a tax return to claim the EITC. *Additional Child Tax Credit*. If a taxpayer has at least one child that qualifies for the Child Tax Credit, the taxpayer must file a tax return to claim the credit and the Additional Child Tax Credit. *American Opportunity Tax Credit*. The AOTC is available for four years of post secondary education and can be up to $2,500 per eligible student. The taxpayer, a spouse or a dependent must have been a student enrolled at least half time for at least one academic period. Even if the taxpayer does not owe any taxes, the taxpayer may still qualify. Eligible taxpayers must complete Form 8863, *Education Credits*, and file it with a return to claim the credit. Taxpayers may use the Interactive Tax Assistant tool on https://www.irs.gov/uac/Interactive-Tax-Assistant-(ITA)-1 to see if they can claim the credit. **IRS Tax Tip 2016-3**.

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer was an S corporation which was formed under an operating agreement which created a second class of stock, causing its S corporation election to be invalid. The taxpayer amended its operating agreement to remove the second class of stock as soon as the problem was discovered. The IRS ruled that the invalidity of the S corporation election was inadvertent and that the election was valid after the operating agreement was amended. **Ltr. Rul. 201603016, Oct. 1, 2015**.

SAFE HARBOR INTEREST RATES
February 2016

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.81	0.81	0.81	0.81
110 percent AFR	0.89	0.89	0.89	0.89
120 percent AFR	0.97	0.97	0.97	0.97
		Mid-term		
AFR	1.82	1.81	1.81	1.80
110 percent AFR	2.00	1.99	1.99	1.98
120 percent AFR	2.18	2.17	2.16	2.16
		Long-term		
AFR	2.62	2.60	2.59	2.59
110 percent AFR	2.88	2.86	2.85	2.84
120 percent AFR	3.14	3.12	3.11	3.10

Rev. Rul. 2016-4, I.R.B. 2016-6.

TRAVEL EXPENSES. The taxpayer invested in mineral rights and distressed residential properties. The taxpayer claimed travel expenses related to traveling to various investment properties. The taxpayer attempted to substantiate the travel through travel logs created for trial from credit card receipts, bank receipts and copies of cashier checks. The receipts and checks did not contain any information about the business purpose of each expense. Although the court acknowledged the credible testimony of the taxpayer as to the legitimacy of the travel expenses, the court held that the deductions were properly disallowed for lack of substantiation. **Niemann v. Comm'r, T.C. Memo. 2016-11.**

INSURANCE

INSURED. The defendant borrowed his grandfather's tractor to pull the defendant's brother's pickup out of a snow bank on a nearby highway. The tractor stalled and before it could be removed from the highway, another vehicle struck it, injuring the driver. The grandfather owned an insurance policy on the tractor and the insurance company defended on the suit filed by the driver. The defendant sought to have the insurance company also defend the defendant as an employee of the grandfather. The court held that the definition of insured in the policy was restricted to the grandfather as owner of the policy and any employee. The evidence showed that the defendant and brother did provide labor and other services for the grandfather on the farm but the court held that the use of the tractor to pull the pickup out of the snowbank was not within the scope of the defendant's employment because the action did not benefit the grandfather in any way. Therefore, the court held that the defendant was not covered as an insured under the policy and the insurance company did not have to defend the defendant in the personal injury lawsuit. In addition, the court found that the insurance policy was restricted to coverage of the farm premises. The defendant argued that, because the highway was used to access the grandfather's farm, it was included in the coverage of the farm premises. The court rejected this argument in this case because the tractor was not on the highway as part of the farm operation but was used for the defendant's personal purposes. **Clark v. Farmers Union Mut. Ins. Co., 2015 N.D. LEXIS 305 (N.D. 2015)**.

PROPERTY

RAILROAD RIGHT-OF-WAY. The plaintiffs were rural landowners who challenged the conversion of an abandoned railroad corridor to a recreational trail. The plaintiffs argued that the conversion affected a taking of the plaintiffs' reversion interest in the corridor. The plaintiffs argued that, under Florida law, a railroad cannot take a fee simple interest in rail corridor land; therefore, upon abandonment, the corridor reverted to ownership by the plaintiffs. The Federal Court of Claims certified the question to the Florida Supreme Court which ruled that a railroad could obtain a fee simple interest in railroad corridor land. The court held that, because the railroad obtained a fee simple ownership of the corridor land in exchange for adequate consideration, the conversion of the corridor to a recreational trail was not a taking of any property interests of the plaintiffs. The decision was affirmed on appeal. **Rogers v. United States, 2015 U.S. App. LEXIS 22732 (Fed. Cir. 2015),** ***aff'g*****, 107 Fed. CL. 387 (2012)**.

ZONING

VIOLATION. The defendants built a greenhouse and a gazebo on their rural property without first obtaining zoning permits from the plaintiff. When the defendants attempted to build a barn on the property, the plaintiff refused to issue the permit unless the defendants paid a fine for the violations from building the greenhouse and gazebo. The plaintiff offered to provide permits for all three structures if the fines were paid. The defendants refused to pay the fines and completed construction of the barn. The plaintiff sued for removal of the buildings. The trial court granted summary judgment for the defendants and ordered the plaintiff to issue the permits and assess only the normal fees. On appeal, the appellate court looked at the validity of the fines and held that, because the plaintiff had not obtained a judicial determination of a violation of the zoning ordinance, no fines could be assessed against the defendants. The appellate court affirmed the ruling of the trial court, stating that a building constructed without the proper permit was merely a nuisance per se and the trial court had the authority to impose a remedy which removed the nuisance with the least harm to the parties. Because the order to issue the permits removed the nuisance at the least cost to both parties, the trial court's order was affirmed. **Claybanks Township v. Feorene, 2015 Mich. App. LEXIS (Mich. Ct. App. 2015)**.

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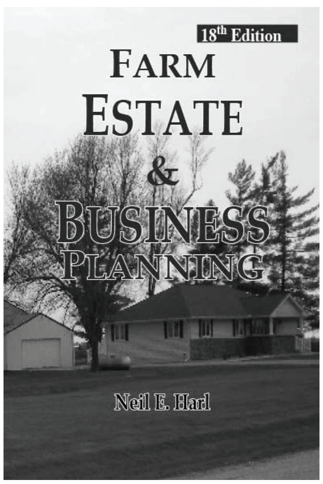
18th EDITION

FARM ESTATE & BUSINESS PLANNING



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